In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 361

STANLEY A. JONIKAS, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 27-36) is reported at 197 F. 2d 675.

JURISDICTION

The judgment of the Court of Appeals was entered on July 3, 1952 (R. 37). The petition for a writ of certiorari was filed September 27, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner can collaterally attack a judgment of conviction by a motion under 28 U.S.C. 2255 on the basis of alleged errors in the trial court's instructions.

STATEMENT

An eight-count indictment returned in the United States District Court for the Northern District of Illinois charged petitioner with possessing and passing counterfeit bills, in violation of 18 U.S.C. 472. Following a trial by jury, petitioner was found guilty and sentenced to imprisonment for a period of fifteen years (R. 2). Upon appeal, the Court of Appeals for the Seventh Circuit affirmed the judgment of conviction rejecting petitioner's sole contention at that time, that the evidence was insufficient to support the conviction (R. 2). *United States* v. *Jonikas*, 187 F. 2d 240. Thereafter the trial court reduced petitioner's sentence to imprisonment for seven and a half years. (R. 2.)

The present proceeding was initiated when petitioner filed a motion to vacate under 28 U.S.C. 2255 in which he alleged that errors in the trial court's instructions deprived him of a fair trial (R. 3-14). Petitioner admitted that there was evidence that at four different taverns he gave a counterfeit twenty-dollar bill in payment for drinks; that at the trial, in testifying in his own behalf, he admitted that he may have passed

counterfeit money but denied hat he knew the money was counterfeit; and tat the judge instructed the jury that in order t convict him they had to find that defendant did have such knowledge (R. 5-7). He also admited that his trial counsel did not propose suggsted instructions or reserve an exception to the given (R. 12.) Nevertheless, he argued, the instructions were deficient in a number of respects, among which were:

1. the failure to distinguish among the eight counts (four for possessing and four for passing the four different bills) (R. 11-2).

2. the failure to instruct on ntent to defraud (R. 10).

3. the court's statement tha since there was little question as to the passing f counterfeit the case narrowed down to the is e of knowledge (R. 10).

4. improper instructions o circumstantial evidence and reasonable doubt (. 10, 11).

5. the fact that special instru tions were given on the factors to be considered i weighing the defendant's testimony (R. 11).

6. the failure to instruct on t presumption of innocence (R. 12).

The trial court denied the m on to vacate on the ground that the record in t s case did "not show such a denial of right t a fair trial or

deprivation of constitutional rights as to render the sentence subject to collateral attack" (R. 15-17). The Court of Appeals affirmed the trial court's judgment (R. 37).

ARGUMENT

Petitioner's sole contention (Pet. 7-8) is that the alleged errors in the instructions were so prejudicial as to deprive him of his right to a trial by jury. Petitioner shows the lack of merit in his own contention when he states (Pet. 11) that he "knows of no case where relief has been granted on habeas corpus or under Section 2255, Title 28, because of failure to give proper instructions to the jury." As pointed out by both the court below (R. 28-29) and the District Court (R. 15-17), alleged trial errors of this nature are cognizable on appeal, not on habeas corpus or on motions to vacate. See *Sunal* v. *Large*, 332 U.S. 174; *Adams* v. *United States ex rel. McCann*, 317 U.S. 269, 274; *Collins* v. *McDonald*, 258 U.S. 416, 420-421; *Matter of Moran*, 203 U.S. 96, 105; *Morton* v. *Welch*, 162 F. 2d 840 (C.A. 4), certiorari denied, 332 U.S. 779; *Cash* v. *Huff*, 142 F. 2d 60 (C.A. 4), certiorari denied, 323 U.S. 747. Accordingly it is unnecessary here to consider whether the instructions were deficient as urged by petitioner. Suffice it to say, that the instructions as a whole (R. 6-9), when read together with the evidence adduced in this case, fairly presented the issues to the jury, and

would not have presented a basis for reversal even upon direct appeal, particularly in view of the fact that no objections were made to the instructions by defendant's counsel. See opinion below (R. 27-36).

CONCLUSION

It is therefore respectfully submitted that the petition for certiorari should be denied.

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